

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 22, 2010 has been entered.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 03/22/10 was filed after the mailing date of the final rejection on 05/22/09. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirata (US 6,521,219), Braida-Valerio et al. (US 6,076,530) and Maubru et al. (US 6,303,110) for reasons of record.

Applicant argues that Hirata teaches away from the instant invention because the Hirata requires moisture to be present on the hair for the peptides to be effective.

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A review of Hirata, in view of applicant's arguments and the amendments to the claims has been fully considered, but are found unpersuasive. Instant claim 1 has been amended to require a pre-drying step after application of the ceramide compound, but before application of the iron. Hirata teaches active steps of applying the peptides to hair and then actively drying the hair before it is pressed by a hot flat iron, see the working example bridging columns 9-10. There is no requirement in the instant claims that the hair must be completely dried before application of the iron.

Applicant additionally argues that Braida-Vallerio also required moisture in the form of steam to be present in the hair. Applicant concludes that Braida-Vallerio also teach away from the instant invention.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's arguments and a review of Braida-Vallerio have been fully considered, but are found unpersuasive. Braida-Vallerio teach application of a ceramide to the hair, followed by application of hot gas and steam, see column 4, lines 44-48. Braida-Vallerio concludes that the quantity of ceramide that bound to the hair is greater when hair is treated with steam, see column 5, lines 9-11. Since Braida-Vallerio clearly demonstrates that heat promotes greater attachment of ceramides to hair, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have applied a heated flat iron after drying, as taught by

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Hirata, to further style the hair, without an unexpected result of ceramide unbinding to the hair after flat iron treatment.

### *Conclusion*

This is a Request for Continued Examination of applicant's earlier Application No. 10/825,154. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANON A. FOLEY whose telephone number is (571)272-0898. The examiner can normally be reached on flex, generally M-F 7AM - 3 PM, alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne L. Eyler can be reached on (571) 272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shanon A. Foley/  
Primary Examiner  
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